

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SATHEESH TUMMALA,

Plaintiff,

v.

CHRISTINE WORMUTH, Secretary of the
United States Army,

Defendant.

Civil Action No. 22-7619 (SDW) (JRA)

WHEREAS OPINION

July 30, 2024

WIGENTON, District Judge.

THIS MATTER having come before this Court upon Plaintiff Satheesh Tummala's Motion for Default Judgment "for failure to file Answer in this case" pursuant to Federal Rule of Civil Procedure 12(a)(2). (D.E. 27); and

WHEREAS Rule 12(a)(2) requires a defendant to serve an answer within 21 days after being served with the summons and complaint; and

WHEREAS Rule 12(b) requires a motion to dismiss be asserted *before* a party responds to a complaint. Fed. R. Civ. P. 12; and

WHEREAS Defendant timely filed both a motion to dismiss the Complaint and later a motion to dismiss the Amended Complaint. (D.E. 12 & D.E. 32); and

WHEREAS Rule 55 provides that the Clerk of Court may enter default when a party has failed to plead or otherwise defend. Fed. R. Civ. P. 55. If the party still fails to appear after the entry of default, then a default judgment may be appropriate; and

WHEREAS Plaintiff has not sought entry of default or provided any support for his assertion that Defendant has defaulted; therefore,

Because Defendant has appeared and is actively pursuing a defense in this case, and because there has been no formal entry of default pursuant to Rule 55, the Motion for Default Judgment is both procedurally improper and moot. Accordingly, Plaintiff's Motion for Default Judgment **DENIED**.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Parties
Jose R. Almonte, U.S.M.J.